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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/929,681	08/13/2001	Laurence S. Sloman	A01P1062	9085

7590 02/13/2004
PACESETTER, INC.
15900 Valley View Court
Sylmar, CA 91392-9221

EXAMINER

OROPEZA, FRANCES P

ART UNIT	PAPER NUMBER
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3762

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DATE MAILED: 02/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/929,681

Applicant(s)

SLOMAN, LAURENCE S.

Examiner

Frances P. Oropeza

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION***Claim Rejections - 35 USC § 102***

1. Claims 1-3, 5-17, 19 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Duggan (US 5318593). Duggan discloses a multi-mode adaptable pacemaker that change the operating parameters of pulse width and refractory period in response to a current battery energy level. The Applicant states operating parameters can be adjusted based on changes in pacing pulse energy (pulse width, amplitude, or a combination thereof) – specification page 25, lines 7-11. The operating parameter table is read as a function. (abstract; col. 3 @ 38-42; col. 4 @ 9-34; col. 4 @ 53 – col. 5 @ 7; col. 5 @ 22-33; col. 7 @ 41-50; col. 8 @ 24-35 and 48-52; col. 9 @ 39-49; col. 9 @ 59 – col. 10 @ 3; col. 10 @ 27 – col. 11 @ 10; col. 13 @ 41-51; col. 20 @ 48 – col. 21 @ 66; col. 33 @ 64 – col. 34 @ 9; col. 38 @ 36 – col. 39 @ 5).

Claim Rejections - 35 USC § 103

2. Claims 4, 18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duggan (US 5318593) in view of Mann et al. (US 5127402). As discussed in paragraph 1 of this action, Duggan discloses the claimed invention except for the operating parameter being a maximum sensor rate.

Mann et al. teach managing stimulation pulse amplitude in an implantable device by limiting the maximum sensor rate based on the detected voltage for the purpose of regulating the current drain. It would have been obvious to one having ordinary skill in the art at the time of the invention to have used a feature of limiting the programmed maximum sensor rate based on the detected voltage in the Duggan system in order to

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extend battery life, avoiding costly, potentially dangerous surgery to replace the battery
(col. 1 @ 13-20; col. 3 @ 20-41; col. 6 @ 18-23; col. 6 @ 63 – col. 8 @ 58).

Other Prior Art Cited

The prior art made of record and not relied upon is considered pertinent to the Applicant's disclosure. US 4974589 to Sholder teaches automatically reprogramming of pacemakers (col. 3 @ 56 – col. 4 @ 11).

Statutory Basis

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Conclusion

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Fran Oropeza, telephone number is (703) 605-4355. The Examiner can normally be reached on Monday – Thursday from 6 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Angela D. Sykes can be reached on (703) 308-5181. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for regular communication and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist, telephone number is (703) 308-0858.

Frances P. Oropeza
Patent Examiner
Art Unit 3762

FPO
2/7/04

Angela D. Sykes

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